

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-7028-AG (KK)	Date	September 25, 2015
Title	Anthony Butler v. K. Harrington		

Present: The Honorable	Kenly Kiya Kato, United States Magistrate Judge
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Deb Taylor

None

None

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

None Present

None Present

Proceedings: (In Chambers) Order for Defendant to Show Cause For Failure to File Responsive Pleading

On September 28, 2009, petitioner Anthony Butler (“Petitioner”) filed a Petition for Writ of Habeas Corpus by a Person in State Custody under 28 U.S.C. § 2254 (“Petition”) against respondent Warden K. Harrington (“Respondent”). ECF Docket No. (“Dkt.”) 1. In the Petition, Petitioner challenges his 2005 conviction for attempted murder, and presents the following five claims: (1) the trial court failed to properly instruct the jury (“Claim One”); (2) jurors slept during parts of his trial (“Claim Two”); (3) ineffective assistance of counsel (“Claim Three”); (4) the trial court improperly barred the recall of a prosecution witness (“Claim Four”); and (5) the prosecutor committed misconduct (“Claim Five”). Id.

On February 10, 2015, Respondent filed a motion to dismiss the Petition (“Motion”). Dkt. 43. On September 5, 2015, the Court granted the Motion with respect to Claims One, Four, and Five and denied the Motion with respect to Claims Two and Three. Dkt. 58. As of the date of this Order, Defendant has failed to file an answer to Claims Two and Three.

Under Federal Rule of Civil Procedure 12(a)(4), where a respondent files a motion to dismiss and the court denies the motion, the respondent must file an answer within 14 days after receiving notice the court denied the motion. Fed. R. Civ. P. 12(a)(4). Here, Respondent has failed to file an answer within 14 days of receiving notice the Court denied the Motion.

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Accordingly, Respondent is **ORDERED TO SHOW CAUSE**, in writing, why Respondent has failed to file an answer. Respondent shall have up to and including **October 9, 2015** to respond to this Order. The Court cautions Respondent that failure to timely file a response to this Order may result in the entry of default, pursuant to Federal Rule of Civil Procedure 55(a).